STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of:	)	
HIGHLINE SPECIALIST CORP. dba House of Luxuries	)	Account Number SR EA 100-205680 Case ID 468309
Petitioner	)	Costa Mesa, Orange County

Type of Business: Used car dealer

Audit period: 7/1/03 – 6/30/06

Item	Disputed Amount	
Fair rental value of loaner vehicles	$9,713	
Tax determined		$16,182.68
Post-D&R adjustment		-15,429.86
Proposed redetermination, protested		$ 752.82
Proposed tax redetermination		$ 752.82
Interest through 4/30/12		457.08
Total tax and interest		$1,209.90
Monthly interest beginning 5/1/12		$4.39

This matter was scheduled for Board hearing in January 2012, but petitioner did not respond to the Notice of Hearing. Accordingly, it was scheduled for decision on the nonappearance calendar. Subsequently, petitioner responded, requesting that the matter be placed back on the hearing calendar.

UNRESOLVED ISSUE

Issue: Whether petitioner owes use tax on the fair rental value of vehicles removed from its inventory for use as loaner vehicles. We conclude that it does.

Petitioner operates a used car dealership specializing in high end luxury vehicles. It sometimes loans an inexpensive trade-in vehicle held in its resale inventory to its customers when it services or repairs a customer's vehicle. Petitioner did not provide any records for its loaner vehicles, but indicated that approximately ten vehicles were incidentally used as loaners during the audit period. Through a series of calculations, the Department established $194,239 as the cost of 10 vehicles

incidentally used as loaners, of which 5 percent or $9,713 was calculated as the unreported fair rental value of the vehicles during the audit period.

Petitioner contends that it should not owe any tax on its use of loaner vehicles because: in most cases, the loaners were used for less than a day; petitioner is not a new car dealer or a service center, is not in the rental car business, and does not offer maintenance agreements to its customers; petitioner does not charge its customers for the use of the loaners; the Department's computations using 1 percent of the cost of sales are "random"; and petitioner's wholesale sales of vehicles should not be included in the computations because it does not service any of those vehicles.

It is undisputed that petitioner removes vehicles from its resale inventory for use as loaner vehicles. Such use is taxable pursuant to Revenue and Taxation Code section 6244, subdivision (a). Sales and Use Tax Regulation 1669.5, subdivision (b)(7) provides that the measure of such use should be the fair rental value of the vehicles for the duration of the loan periods. The Department used 1 percent of petitioner's cost of sales because it approximates the cost of 10 cars that petitioner indicated were used as loaners. Thus, the Department's calculations were not random but actually based on petitioner's representations. Regarding the contention that petitioner did not charge for the loaners, if it made a fair rental charge for the loaners, then that charge would have been a taxable rental charge. It is because petitioner did not make a fair rental charge to its customers for the loaners that it was a consumer owing use tax on its use of the loaner vehicles, though it owes tax only on the value of that use (rather than on the full cost of the loaner vehicles) because of the special provisions of Regulation 1669.5 which are applicable here. Since petitioner has not established that the Department's calculations overstate the measure, we conclude that no adjustment is warranted.

RESOLVED ISSUE

Petitioner's contention with respect to the disallowed claimed returned merchandise deduction has been resolved in petitioner's favor.

OTHER MATTERS

None.

Summary prepared by Pete Lee, Business Taxes Specialist II

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL